

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY S. BOONE

Appeal No. 98-1945
Application 08/655,736¹

ON BRIEF

Before COHEN, MEISTER and McQUADE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This appeal involves claims 1 through 12 and 16 through 24, all of the claims remaining in the application, as amended subsequent to the final rejection.

¹ Application for patent filed May 30, 1996. According to the appellant, the application is a "continuation" of provisional application 60/000,021, filed June 8, 1995, now abandoned. However, we believe it only appropriate to indicate that the present application is accorded benefit of the filing date of the specified provisional application; 35 U.S.C. § 119(e)(1).

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Appellant's invention pertains to a tampon device, a tampon applicator device, a tampon device kit, and to a method of reminding a tampon user that a tampon has been used. An understanding of the invention can be derived from a reading of exemplary claims 1, 4, 10, and 16, copies of which appear in the revised Appendix attached to "REPLY TO PAPER 23" (Paper No. 24).

As evidence of obviousness, the examiner has applied the documents listed below:

Stump	3,429,312	Feb. 25, 1969
Bossak	3,948,257	Apr. 6, 1976
Thompson	4,332,251	Jun. 1, 1982
Jones	4,941,688	Jul. 17, 1990

The following rejection is before us for review.²

² It is apparent that both the final rejection of claims 1 through 9, 19, 20, 22 and 23 under 35 U.S.C. § 112, first paragraph, and the new ground of rejection under 35 U.S.C. § 112, second paragraph, set forth in the answer, have been overcome by the entry of subsequently filed amendments.

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Claims 1 through 12 and 16 through 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stump in view of Bossak, Thompson, and Jones.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the first and final rejections and answer (Paper Nos. 4, 9 and 15),³ while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 14 and 16).

In the main brief (pages 2, 3, and 6), appellant groups the claims as follows: claims 1-3, claims 4-9, claim 10, claims 11-12, claim 16, claim 18, claims 19-21, and claims 22 through 24, and requests that each group of claims be considered separately.

OPINION

³ The examiner has not complied with Section 1208 of the MPEP. This section specifies that statements of grounds of rejection appearing in a *single* prior action may be incorporated by reference into an examiner's answer. Thus, reference should not be made, directly or indirectly, to more than one prior office action.

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In reaching our conclusion on the obviousness issue raised in this appeal, we have carefully considered appellant's specification and claims, the applied patents, and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

This panel of the board reverses the examiner's rejection of appellant's claims under 35 U.S.C. 103, for the reasons set forth below.

When we set aside what appellant has taught us in the present application, it is at once apparent to us that, absent impermissible hindsight, the applied references themselves would not have been suggestive of the tampon device (claim 1), the tampon applicator device (claim 4), the tampon device kit (claim 10), and the method of reminding a tampon user that a tampon has been used (claim 16).

We certainly comprehend each of the applied teachings.

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In particular, we appreciate the Jones disclosure of an adhesively secured periodic event recorder that is intended to be associated with, related to, or nearby the site of performance of a desired task or event (column 1, lines 58 through 68). However, as we see it, at best, of the collective evidence of obviousness before us, the Bossak and Thompson patents would have been fairly suggestive of the application of either of the respective deodorant retaining device and disc features for a tampon (each with their additional reminder function) to the tampon applicator and package arrangement of Stump (Fig. 5). This modification, of course, does not yield appellant's invention.

As should be evident from our analysis, supra, the evidence of obviousness relied upon simply would not have been suggestive of, in particular, an adhesive reminder "sticker", a requirement of each of appellant's independent tampon device and method claims 1, 4, 10, and 16.

In summary, this panel of the board has reversed the rejection of appellant's claims under 35 U.S.C. § 103.

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The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
JAMES M. MEISTER)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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